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SUPREME COURT OF THE UNITED STATES.

No. 65.

EDWIN M. CHAFFEE, PL'FF IN ER.,

vs.

THE BOSTON BELTING COMPANY.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MASSACHUSETTS.

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UNITED STATES, *ss:*

The President of the United States, to the judges of the circuit court holden in and for the district of Massachusetts, greeting:

[SEAL.]

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Edwin M. Chaffee, of Providence, in the State of Rhode Island, plaintiff, and the Boston Belting Company, a corporation established under the laws of the State of Massachusetts, defendants, in a plea of the case, a manifest error has intervened to the great damage of the said Chaffee, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national government: that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, Chief Justice of the said Supreme Court, at Washington aforesaid, this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

H. W. FULLER,
Clerk.

Allowed by

B. R. CURTIS,
Jus. S. C. U. S.

UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, Henry W. Fuller, clerk of the circuit court of the U. S. Massachusetts district, do now make return of this writ, and transmit herewith a true copy of the entire record and of all proceedings in the suit of Edwin F. Chaffee against the Boston Belting Company, wherein judgment was rendered in our said circuit court. I also annex hereto the citation issued upon the issuing of this writ of error, and certify that a copy of said writ of error was lodged in the clerk's office for the adverse party, on the 26th day of September, A. D. 1857.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this twenty-eighth day of November, A. D. 1857.

[SEAL.]

H. W. FULLER,
Clerk.

UNITED STATES OF AMERICA:

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District, ss:

[SEAL.]

To the Boston Belting Company—a corporation established under the laws of the State of Massachusetts, and having its place of business in Boston, in said State, greeting:

You are hereby cited and admonished to be and appear before the Chief Justice and associate justices of the Supreme Court of the United States, on the first Monday of December next, at ten o'clock a. m., at Washington, being the present seat of the national government, then and there to make answer to a writ of error this day sued out of the clerk's office of the circuit court of the United States, Massachusetts district, wherein Edwin M. Chaffee, of Providence, in the State of Rhode Island, and a citizen of said State, is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

Witness the Hon. Roger B. Taney, Chief Justice of said Supreme Court of the United States, this 26th day of September, A. D. eighteen hundred and fifty-seven.

B. R. CURTIS,
Associate Justice of the Sup. Ct., U. S.

[Endorsed:] Edwin M. Chaffee, plff. in error, vs. the Boston Belting Co. Citation.

May term, 1857.

UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit and district of Massachusetts, begun and holden at Boston, within and for the district of Massachusetts, on Friday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, before the honorable Benjamin R. Curtis, associate justice, Peleg Sprague, district judge:

EDWIN M. CHAFFEE, of Providence, in the district of Rhode Island, manufacturer, plaintiff,

vs.

THE BOSTON BELTING COMPANY, a Corporation duly established under and by the laws of Massachusetts, having its place of business at Boston, in the district of Massachusetts, defendants;

In a plea of trespass on the case—for that Edwin M. Chaffee, of New Haven, in the State of Connecticut, and a citizen of said State, in the year 1836, became and was the original discoverer and inventor of certain improvements in the manufacture of India-rubber, and being the inventor thereof as aforesaid, made application in due form of law to the Commissioner of Patents for the United States for a patent for said improvements, and paid thereon the patent fee of thirty dollars, and presented a model, specification, and drawings describing his aforesaid invention and improvements, and such proceedings were had thereon that letters-patent were granted unto the said Chaffee, thereby securing to him his said invention and improvements in due form of law, as will more fully appear by said letters-patent, ready in court to be produced.

And the plaintiff further saith that said invention and improvements are fully and correctly described and set forth in said letters-patent; and which consist in a mode of preparing India-rubber for manufacturing purposes, and reducing it to a pasty state, without the use of the spirits of turpentine or other solvents, and of applying the same to cloths and other purposes by the use of heated rollers and other means described in said letters-patent, by means of which a very large portion of the expense of reducing India-rubber to a proper degree of softness, and of fitting and preparing it for manufacturing purposes was saved; which improvements went immediately into use, and were found very valuable and a great saving of expense in the manufacture of India-rubber.

And the plaintiff further saith that afterwards, to wit, previous to the 31st day of August, 1850, the said Edwin M. Chaffee made application to the Commissioner of Patents, in due form of law, for an extension of said patent for a further term of seven years from and after the expiration of the term for which said letters-patent were originally granted as aforesaid; and such proceedings were had on such application that said patent was extended by the Commissioner of Patents for such further term of seven years from and after the 31st day of August, 1850, as by a copy of said patent and of the certificate of extension thereof, hereunto annexed, will more fully appear.

And the plaintiff further saith, that the said Edwin M. Chaffee, having the full title to said extended patent and good right to dis-

pose of the same, did, on the 1st day of July, A. D. 1853, by his deed of assignment of that date, in writing, duly executed, and recorded in the Patent Office, and for a valuable consideration to him paid as therein expressed, transfer, assign, and convey to the plaintiff all his title to said invention and to said patent for said extended term, as by said original deed of transfer, to be produced in court when required, and by a copy thereof hereunto annexed, will fully appear.

And the plaintiff further saith, that in and by said deed of assignment, the said Chaffee transferred and conveyed to the plaintiff all his right, title, interest, and power in, to, or over any and all damages, or claim, or right to damages against any and all persons whatsoever, for or by virtue of or arising from any and all infringements of said letters-patent, or for which a right of action or suit has accrued or shall accrue to said Chaffee, whereby the plaintiff is entitled to claim, have, and recover of said defendants all the damages which have accrued to said Chaffee before the date of said deed of assignment, as well as all that have accrued to the plaintiff since the said deed was executed; and the plaintiff was the legal owner and holder of said letters-patent at the time of the infringement of the same herein complained of.

And the plaintiff further saith, that on or about the 31st day of August, A. D. 1850, without law or right, the said defendants fraudulently commenced the use of said improvements, and have continued the use thereof on each and every day to the commencement of this suit, and hath, by the like use of said improvements, made and prepared large quantities of India-rubber without the use of spirits of turpentine or other solvents for manufacturing purposes, to wit, to the amount of ten thousand tons of India-rubber, made by the defendants as aforesaid, and by them sold for manufacturing purposes; and also ten thousand tons made and prepared as aforesaid by the defendants, and by them wrought into various articles of merchandise and sold; whereby the defendants have made for themselves great gain, all which is an infringement of said patent, and contrary to the mind and will of the plaintiff, and contrary to law, and to his great damage—to the damage of the said Chaffee, as he says, the sum of one hundred thousand dollars.

This action was entered at the May term, A. D. 1854, of this court, when and where the parties appeared by their respective attorneys, and thence the same was continued from term to term until this present term; and now the said defendants come and defend, &c., when, &c., and for plea say that they are not guilty in manner and form as the plaintiff hath thereof declared against them; and of this they put themselves upon their country for trial, by H. F. Durant, their attorney; and the plaintiff doth the like by his attorney, David Thaxter, by T. A. Jenckes.

Issue being thus joined, the cause, after a full hearing, is com-

mitted to a jury sworn according to law to try the same; who, after hearing all matters and things concerning the same, return their verdict therein, and upon oath say that the defendants are not guilty in manner and form as the plaintiff hath thereof declared against them.

Upon the trial of the above-entitled cause, after the evidence was closed on both sides, and before the issue was submitted to the jury, the plaintiff filed his bill of exceptions, which was allowed by the court, and is in the words following, to wit:

At the trial of the above-entitled cause, it was conceded and agreed that the defendants, before the date of the plaintiff's writ, used certain machinery, constructed in conformity with the specification attached to the letters-patent declared on, and that the defendants, in using the said machinery, conformed to the directions in the said specification contained, and that the same was so used for the preparation and application of India-rubber to the manufacture of the articles mentioned and described in the indenture between Goodyear and Edwards, a copy whereof is hereunto annexed, and that all the machinery so used was constructed and in use as aforesaid before and at the time the original term of the letters-patent expired; and it appeared that, at the date of the said indenture between Goodyear and Edwards, the said Goodyear was the owner of the letters-patent declared on, for and during the original term thereof.

The presiding judge ruled and instructed the jury that, under their title, the defendants had the right to continue to use the same machinery for the same purposes, and in conformity with the directions contained in the said specification, after the expiration and renewal of the said letters-patent, and consequently that the plaintiff could not recover.

To this ruling the plaintiff excepted.

The copy of the agreement referred to in the aforesaid bill of exceptions is as follows, to wit:

This indenture, made and entered into this twenty-sixth day of January, A. D. 1846, by and between Charles Goodyear, of the city of New Haven, in the State of Connecticut, and Henry Edwards, of the city of Boston, in the State of Massachusetts, witnesseth:

That whereas the said Goodyear and Edwards did heretofore enter into a certain indenture under date of the fourth day of March last past, whereby said Goodyear granted and conveyed to said Edwards an exclusive right or license to make, use, or vend belting and banding for machinery, as therein set forth: now in consideration of one thousand dollars to said Goodyear paid by said Edwards, the receipt whereof is hereby acknowledged, it is understood and agreed that the said agreement shall be so construed, extended, and enlarged as to include under the terms belting and banding therein used all belting, banding, and blanketing

used in or on machinery, for or in calico, or other printing, whether known as belts, banding, bands, blanketing, or by whatsoever name when applied to the same purposes.

Also all deckel-straps, so called, used by paper makers, or in or on the machinery for paper making; and the said Edwards shall have the same exclusive right and license to make, use, and vend said belts, bands, banding, and blanketing, and deckel-straps, that he has to make, use, and vend belting and banding by said indenture.

And in consideration of said one thousand dollars, and of the agreement hereinafter made by said Edwards, the said Goodyear doth hereby sell, bargain, grant, and convey to the said Edwards, his executors, administrators, and assigns, the exclusive right and license to make, use, and vend any and all articles used on or in or attached to machines, or in the manufacture, construction, or use of machines or machinery, of whatever description; it being understood that said right or license is to apply to any and all articles substituted for leather, metal, or other substances, in the use or manufacture of such machines or machinery, in so far as the said Goodyear may have any rights or privileges in virtue of any and all inventions and improvements made in the manufacture of India-rubber or gum-elastic goods, or which shall be hereafter made by said Charles Goodyear, and in virtue of any and all letters-patent or patent rights of the United States of America, granted or belonging to and which shall be granted or belong to said Goodyear, for any and all inventions or improvements in the manufacture of India-rubber goods, the said right and license herein conveyed to said Henry Edwards being limited to and for the United States of America, and not extending to any foreign country, and not being intended to convey any right to make any contract with the government of the United States.

And the said Edwards doth hereby covenant and agree to and with the said Goodyear, his executors, administrators, and assigns, that he will pay or cause to be paid to him or them, from and after the date hereof, and so long as said Edwards and his assigns shall derive advantage from any patent rights before mentioned belonging to said Goodyear, or derived from him by said Edwards, for all goods hereinbefore mentioned to be made and sold under this license that do not come under or are not included in the terms belting or banding, as specified in said agreement, dated March 4th, A. D. 1845, and that are sold by the running or superficial yard, a sum of money at and after the rate of five cents per superficial yard; and when of pure gum, after the rate of five cents per pound for all such articles not being banding or belting as aforesaid, which the said Edwards or his assigns shall make or cause to be made by or under any of the inventions, improvements, or letters-patent, or patent rights of the said Goodyear, hereinbefore mentioned; said payment to be made by said Edwards on the first days of July and

January in each and every year from this time, so long as this license shall exist, and said Goodyear and his assigns be possessed of any valid patent rights of the United States before mentioned, it being understood and agreed that nothing in this instrument contained is to affect the former indenture between the parties, except as is hereinbefore expressly provided.

And the said Edwards further covenants that he will keep regular books of accounts of all articles hereinbefore mentioned by him manufactured under this license, which said books of account and the places of manufacture of said articles shall at all times be open to the inspection of said Goodyear, and that said Edwards will conform to the law, by causing the name of the said Goodyear and the date of his patent or patents to be stamped upon or affixed to said articles, as is provided in said former indenture in regard to belting and banding.

In testimony whereof, the within-named Charles Goodyear and Henry Edwards have hereunto set their hands and seals on the day and year first above written.

CHAS. GOODYEAR,
HENRY EDWARDS.

In presence of
BENJ. F. COOBE,
WM. F. PUTNAM.

UNITED STATES OF AMERICA,
Mass. dist., ss:

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit Massachusetts district, do hereby certify that the foregoing is a true transcript of the record and of all proceedings in the cause of Edwin M. Chaffee vs. the Boston Belting Company in said court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Boston, in said district, this sixth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of these United States the eighty-second.

[SEAL.]

H. W. FULLER,
Clerk.